

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. PEREZ and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 03-1850; Submitted on the Record;
Issued September 10, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a two percent permanent loss of use of his right lower extremity.

On December 14, 2001 appellant, then a 56-year-old sheet metal mechanic, filed a claim for traumatic injury, alleging that on December 12, 2001 he sustained injuries to his hands and knees when he tripped and fell in the performance of duty. On January 24, 2002 the Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions of the hands, elbows and knees and noted that a torn medial meniscus had still to be ruled out. Arthroscopic surgery performed on June 7, 2002 revealed the presence of a torn medial meniscus in the right knee, necessitating a partial medial meniscectomy.

On September 30, 2002 appellant's treating physician, Dr. Patrick N. Bays, an osteopath, released appellant to full duty with no restrictions. Dr. Bays stated that appellant had full and painless range of motion of the right knee, with 0 degrees of extension and 140 degrees of flexion. In a follow-up report dated October 14, 2002, Dr. Bays noted that appellant had some minimal swelling and tenderness, but still had full range of motion. On October 24, 2002 appellant filed a claim, Form CA-7, for a schedule award.

By letter dated January 10, 2003, the Office requested that appellant submit a medical report evaluating his degree of permanent impairment. Dr. Bays referred appellant to Dr. Peter V. Ciani, a Board-certified family practitioner, who examined appellant on February 22, 2003. After setting forth appellant's history and findings on physical examination, Dr. Ciani stated that, pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) appellant's partial medial meniscectomy would result in a two percent lower extremity impairment.

On April 13, 2003 an Office medical adviser reviewed Dr. Ciani's report and noted that appellant had reached maximum medical improvement on February 22, 2003. Pursuant to Table 17-33 on page 546 of the fifth edition of the A.M.A., *Guides*, the medical adviser found that a

partial medial meniscectomy equated to a two percent permanent impairment of the lower extremity.

By decision dated May 20, 2003, the Office issued appellant a schedule award for a two percent permanent loss of use of his right leg.

The Board finds that appellant has no greater than a two percent permanent loss of use of his right leg.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In his February 22, 2003 report, Dr. Ciani evaluated appellant's right knee, noting that he complained of occasional locking, some crepitus, pain with kneeling and a low grade constant ache. Dr. Ciani further noted that appellant had an average of 124 degrees of flexion, with an extension lag of 20 degrees and no atrophy. Dr. Ciani applied the diagnosis based estimates in the A.M.A., *Guides* to conclude that appellant had a two percent permanent impairment of his right lower extremity due to his partial medial meniscectomy. As Dr. Ciani did not reference any specific tables or page numbers in the A.M.A., *Guides*, the Office properly forwarded his report to an Office medical adviser for application of the appropriate portions of the A.M.A., *Guides*.⁴ In a report dated April 13, 2003, the Office medical adviser concurred with the findings of Dr. Ciani that, pursuant to Table 17-33 on page 546 of the A.M.A., *Guides*, a partial medial meniscectomy equated to a two percent permanent impairment of the lower extremity.

The only ratable impairment under the A.M.A., *Guides* was for the partial meniscectomy and the A.M.A., *Guides* provide that this constitutes a two percent impairment of the lower extremity.⁵ Therefore, the Office properly issued a schedule award for a two percent permanent loss of use of appellant's right leg.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Richard F. Kastan*, 48 ECAB 651 (1997).

⁴ *John L. McClenic*, 48 ECAB 552 (1997).

⁵ A.M.A., *Guides*, Table 17-33, page 546.

The decision of the Office of Workers' Compensation Programs dated May 20, 2003 is hereby affirmed.

Dated, Washington, DC
September 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member